

By: Hegar
(Bonnen of Galveston)

S.B. No. 1074

A BILL TO BE ENTITLED

AN ACT

relating to electronic transmission of documentation involved in certain insurance transactions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 35.001, Insurance Code, is amended by amending Subdivision (2) and adding Subdivisions (3), (4), and (5) to read as follows:

(2) "Regulated entity" means each insurer, ~~[or other]~~ organization, person, or program regulated by the department, including:

(A) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(B) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(C) a Mexican casualty company;

(D) a domestic or foreign Lloyd's plan;

(E) a domestic or foreign reciprocal or interinsurance exchange;

(F) a domestic or foreign fraternal benefit society;

(G) a domestic or foreign title insurance company;

(H) an attorney's title insurance company;

(I) a stipulated premium company;

1 (J) a nonprofit legal service corporation;
2 (K) a health maintenance organization;
3 (L) a statewide mutual assessment company;
4 (M) a local mutual aid association;
5 (N) a local mutual burial association;
6 (O) an association exempt under Section 887.102;
7 (P) a nonprofit hospital, medical, or dental
8 service corporation, including a company subject to Chapter 842;
9 (Q) a county mutual insurance company; ~~and~~
10 (R) a farm mutual insurance company; and
11 (S) an agency or agent of an insurer,
12 organization, person, or program described by this subdivision.

13 (3) "Deliver by electronic means" means:

14 (A) deliver to an e-mail address at which a party
15 has consented to receive notices, documents, or information; or

16 (B) post on an electronic network or Internet
17 website accessible by an electronic device, including a computer,
18 mobile device, or tablet, and deliver notice of the posting to an
19 e-mail address at which the party has consented to receive notices.

20 (4) "Party" means a recipient, including an applicant,
21 insured, policyholder, enrollee, or annuity contract holder, of a
22 notice or document or of information required as part of an
23 insurance transaction.

24 (5) "Written communication" means a notice or document
25 or other information provided in writing.

26 SECTION 2. Section 35.004, Insurance Code, is amended to
27 read as follows:

1 Sec. 35.004. MINIMUM STANDARDS FOR REGULATED ENTITIES
2 ELECTRONICALLY CONDUCTING BUSINESS WITH CONSUMERS. (a) This
3 section does not apply to a notice of cancellation or termination of
4 health insurance or benefits or life insurance or benefits,
5 excluding annuities.

6 (b) Subject to Subsection (d), a notice to a party or other
7 written communication with a party required in an insurance
8 transaction or that is to serve as evidence of insurance coverage
9 may be delivered, stored, and presented by electronic means only if
10 the delivery, storage, or presentment complies with Chapter 322,
11 Business & Commerce Code.

12 (c) Delivery of a written communication in compliance with
13 this section is equivalent to any delivery method required by law,
14 including delivery by first class mail, first class mail, postage
15 prepaid, or certified mail.

16 (d) A written communication may be delivered by electronic
17 means to a party by a regulated entity under this section if:

18 (1) the party affirmatively consented to delivery by
19 electronic means and has not withdrawn the consent;

20 (2) the party, before giving consent, is provided with
21 a clear and conspicuous statement informing the party of:

22 (A) any right or option the party may have for the
23 written communication to be provided or made available in paper or
24 another nonelectronic form;

25 (B) the right of the party to withdraw consent
26 under this section and any conditions or consequences imposed if
27 consent is withdrawn;

1 (C) whether the party's consent applies:

2 (i) only to a specific transaction for
3 which the written communication must be given; or

4 (ii) to identified categories of written
5 communications that may be delivered by electronic means during the
6 course of the relationship between the party and the regulated
7 entity;

8 (D) the means, after consent is given, by which a
9 party may obtain a paper copy of a written communication delivered
10 by electronic means; and

11 (E) the procedure a party must follow to:

12 (i) withdraw consent under this section;
13 and

14 (ii) update information needed for the
15 regulated entity to contact the party electronically; and

16 (3) the party:

17 (A) before giving consent, is provided with a
18 statement identifying the hardware and software requirements for
19 the party's access to and retention of a written communication
20 delivered by electronic means; and

21 (B) consents electronically or confirms consent
22 electronically in a manner that reasonably demonstrates that the
23 party can access a written communication in the electronic form
24 used to deliver the communication.

25 (e) After consent of the party is given, in the event a
26 change in the hardware or software requirements to access or retain
27 a written communication delivered by electronic means creates a

1 material risk that the party may not be able to access or retain a
2 subsequent written communication to which the consent applies, the
3 regulated entity shall:

4 (1) provide the party with a statement:

5 (A) identifying the revised hardware and
6 software requirements for access to and retention of a written
7 communication delivered by electronic means; and

8 (B) disclosing the right of the party to withdraw
9 consent without the imposition of any condition or consequence that
10 was not disclosed under Subsection (d)(2)(B); and

11 (2) comply with Subsection (d)(3).

12 (f) This section does not affect requirements for content or
13 timing of any required written communication.

14 (g) If a written communication provided to a party expressly
15 requires verification or acknowledgment of receipt, the written
16 communication may be delivered by electronic means only if the
17 method used provides for verification or acknowledgment of receipt.

18 (h) The legal effectiveness, validity, or enforceability of
19 any contract or policy of insurance executed by a party may not be
20 denied solely due to the failure to obtain electronic consent or
21 confirmation of consent of the party in accordance with Subsection
22 (d)(3)(B).

23 (i) A withdrawal of consent by a party does not affect the
24 legal effectiveness, validity, or enforceability of a written
25 communication delivered by electronic means to the party before the
26 withdrawal of consent is effective. A withdrawal of consent is
27 effective within a reasonable period of time after the date of the

1 receipt by the regulated entity of the withdrawal. Failure by a
2 regulated entity to comply with Subsection (e) may be treated by the
3 party as a withdrawal of consent.

4 (j) If the consent of a party to receive a written
5 communication by electronic means is on file with a regulated
6 entity before January 1, 2014, and if the entity intends to deliver
7 to the party written communications under this section, then before
8 the entity may deliver by electronic means additional written
9 communications, the entity must notify the party of:

10 (1) the written communications that may be delivered
11 by electronic means that were not previously delivered by
12 electronic means; and

13 (2) the party's right to withdraw consent to have
14 written communications delivered by electronic means.

15 (k) Except as otherwise provided by law, an oral
16 communication or a recording of an oral communication may not
17 qualify as a written communication delivered by electronic means
18 for purposes of this chapter.

19 (l) If a signature on a written communication is required by
20 law to be notarized, acknowledged, verified, or made under oath,
21 the requirement is satisfied if the electronic signature of the
22 notary public or other authorized person and the other required
23 information are attached to or logically associated with the
24 signature or written communication. [RULES. (a) The commissioner

25 ~~shall adopt rules necessary to implement and enforce this chapter.~~

26 ~~[(b) The rules adopted by the commissioner under this~~
27 ~~section must include rules that establish minimum standards with~~

~~which a regulated entity must comply in the entity's electronic
conduct of business with other regulated entities and consumers.]~~

SECTION 3. Chapter 35, Insurance Code, is amended by adding
Section 35.005 to read as follows:

Sec. 35.005. EXEMPTION FROM CERTAIN FEDERAL LAWS. This
chapter modifies, limits, or supersedes the provisions of the
federal Electronic Signatures in Global and National Commerce Act
(15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of
that Act (15 U.S.C. Section 7002).

SECTION 4. This Act applies only to a written communication
that is delivered by electronic means on or after January 1, 2014.
A written communication delivered by electronic means before
January 1, 2014, is governed by the law as it existed immediately
before the effective date of this Act, and that law is continued in
effect for that purpose.

SECTION 5. This Act takes effect September 1, 2013.